

CHAPTER 445B

PRACTICE BEFORE THE STATE ENVIRONMENTAL COMMISSION

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Note: The Administrative code provided below was received from the Nevada Legislative Counsel Bureau and has not been altered. For access to the .html version of the text, the user should go their website at www.leg.state.nv.us. See the footer for the date of the codification of these regulations. These regulations only contain a portion of the Chapter 445B.

Note to User: See Environmental Commission 2003-01 as temporarily adopted on November 19, 2002 and effective as filed with the Nevada Secretary of State on November 20, 2002. This temporary regulation, expires on November 1, 2003. It substantively amends the Commission’s Rules of Practice. To find a copy of the regulation go to: <http://www.sec.nv.gov/archives/REGISTRY/pr2003-01.htm>

PRACTICE BEFORE THE STATE ENVIRONMENTAL COMMISSION

NAC 445B.875 Definitions.

1. As used in NAC 445B.875 to 445B.899, inclusive, unless the context otherwise requires, the terms defined in NAC 445B.877 to 445B.884, inclusive, have the meanings ascribed to them in those sections.

2. The meanings ascribed to words not included in NAC 445B.877 to 445B.884, inclusive, are in accordance with applicable sections of NAC governing air quality, water pollution or solid waste management and of chapters 444, 445A and 445B of NRS.

[Environmental Comm'n, Practice Rule 1 § B, eff. 1-7-73; A and renumbered as § 1.2, 1-9-76]—(NAC A 11-9-95)

NAC 445B.877 “Appellant” defined. “Appellant” means any person:

1. Who requests a hearing before the commission, pursuant to chapter 278, 444, 444A, 445A, 445B, 459, 486A or 519A of NRS or the commission’s regulations concerning the control of air or water pollution or the management of solid waste; or

2. Whose appearance before the commission is required by:

(a) The director;

(b) An authorized representative of the director; or

(c) A person who is designated by or pursuant to a county or city ordinance or a regional agreement or regulation to enforce local ordinances or regulations for the control of air pollution.

[Environmental Comm’n, Practice Rule 1 § A par. (1), eff. 1-7-73; A 4-3-74; A and renumbered as § 1.1.1, 1-9-76]—(NAC A 10-29-93)—(Substituted in revision for NAC 445.981)

NAC 445B.879 “Commission” defined. “Commission” means the state environmental commission or a panel of three or more members of the state environmental commission in accordance with NRS 445A.610 and 445B.350, where appropriate.

[Environmental Comm’n, Practice Rule 1 § A par. (2), eff. 4-3-74; A and renumbered as § 1.1.2, 1-9-76]—(Substituted in revision for NAC 445.982)

NAC 445B.881 “Department” defined. “Department” means the state department of conservation and natural resources.

(Supplied in codification)—(Substituted in revision for NAC 445.983)

NAC 445B.882 “Director” defined. “Director” means the director of the department.

[Environmental Comm’n, Practice Rule 1 § A par. (3), eff. 4-3-74; renumbered as § 1.1.3, 1-9-76]—(Substituted in revision for NAC 445.984)

NAC 445B.884 “Person” defined. “Person” has the meaning ascribed to it in NRS 445B.150.

[Environmental Comm’n, Practice Rule 1 § A par. (4), eff. 1-7-73; A 4-3-74; renumbered as § 1.1.4, 1-9-76]—(Substituted in revision for NAC 445.985)

NAC 445B.886 Petitions to adopt, file, amend or repeal regulations.

1. Any interested person may petition the commission in writing for the adoption, filing, amendment or repeal of any regulation and shall accompany his petition with relevant data, views and arguments as required by form 1.*

2. Upon submission of a petition, the commission will within 30 days either deny the petition in writing stating its reasons or initiate regulation-making proceedings in accordance with NRS 444.560, 445A.435 or 445B.215, whichever is applicable.

*(See adopting agency for form.)

[Environmental Comm'n, Practice Rule 3, eff. 1-9-76]—(Substituted in revision for NAC 445.986)

NAC 445B.888 Declaratory orders, advisory opinions.

1. Any member of the public may petition the commission for a declaratory order or an advisory opinion as to the applicability of any statutory provision, commission regulation or decision as required by form 2.*

2. Upon submission of a petition, the commission will within 30 days issue a declaratory order or an advisory opinion in writing stating reasons for its action.

*(See adopting agency for form.)

[Environmental Comm'n, Practice Rule 6, eff. 1-9-76]—(Substituted in revision for NAC 445.987)

NAC 445B.890 Request for hearing. (NRS 223B.050, 445B.210) Any person requesting a hearing before the commission concerning a final decision of the department pursuant to chapter 445B of NRS may do so by filing a request, within 10 days after notice of the action of the department, on form 3* with the State Environmental Commission, 333 West Nye Lane, Room 138, Carson City, Nevada 89706-0851.

*(See adopting agency for form.)

[Environmental Comm'n, Practice Rule 2, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 8, 1-9-76]—(NAC A 10-29-93; R063-98, 8-4-98)

NAC 445B.891 Notice of hearing.

1. The secretary of the commission will schedule a hearing to be held within 20 days after receipt of the request for a hearing or an order to appear before the commission.

2. All of the parties must be notified by registered or certified mail of the date thereof which must be no less than 5 days after the date of notification. The notice must include:

(a) A statement of the time, place and nature of hearing;

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of NRS and NAC allegedly violated; and

(d) A brief and concise statement of the matters asserted or the issues involved.

[Environmental Comm'n, Practice Rule 4, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 9, 1-9-76]—(Substituted in revision for NAC 445.989)

NAC 445B.892 Subpoenas.

1. Subpoenas to compel attendance of any person at a hearing or to require the production of books, records or other documents may be issued by the commission.

2. Requests for the issuance of subpoenas must be made to the commission in writing no less than 5 days prior to the hearing date, setting forth the reason and necessity for the subpoenas. Upon good cause shown, subpoenas may be issued at the request of any party to the hearing at any time. The commission may issue any subpoenas on its own initiative without request.

3. All costs incident to subpoenas issued at the request of appellant must be borne by the appellant. The commission may demand payment of those costs prior to the issuance of the subpoenas.

[Environmental Comm'n, Practice Rule 5, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 10, 1-9-76]—(Substituted in revision for NAC 445.990)

NAC 445B.893 Panel to conduct hearings; decision of panel. Three or more members of the commission constitute a proper panel, where appropriate, in accordance with NRS 445A.610 and 445B.350, and a majority of those present must concur in any decision. The decision will be in writing and is a public record.

[Environmental Comm'n, Practice Rule 6, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 11, 1-9-76]—(Substituted in revision for NAC 445.991)

NAC 445B.894 Vacation of hearing; transfer of place of hearing; informal disposition of case.

1. Upon good cause shown, the commission may vacate and reset the time of hearing.

2. Upon good cause shown, the commission may transfer the place of hearing to a more appropriate location, taking into consideration the convenience and fairness to the witnesses and the parties.

3. Unless otherwise provided by law, informal disposition may be made by all involved parties at any time of any contested case or matter.

[Environmental Comm'n, Practice Rule 7, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 12, 1-9-76]—(Substituted in revision for NAC 445.992)

NAC 445B.895 Conduct of hearing.

1. The parties may appear in person and may be represented by counsel. All testimony must be given under oath and recorded verbatim by human or electronic means. The matter must then be heard in the following manner:

(a) Prior to testifying, the witness must state his name, address, and business, employment, or position. Subsequent comments and testimony may be preceded by name only;

(b) Opening statement and presentation of the state's evidence followed by cross-examination by appellant;

(c) Opening statement and presentation of evidence by appellant followed by cross-examination by the state;

(d) The parties may then respectively offer rebutting testimony only, unless the commission, in its discretion, permits additional evidence. In the exercise of its discretion, the commission will consider the relevance and necessity of the new matter expected to be brought out by the additional testimony; and

(e) Closing argument of the state, closing argument of appellant and rebuttal by the state.

2. Hearings are open to the public until such time as confidential information, within the meaning of chapter 445B of NRS or applicable sections of this chapter or chapter 445A of NAC, is admitted to the record, at which time the hearing will be closed.

[Environmental Comm'n, Practice Rule 8, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 13, 1-9-76]—(Substituted in revision for NAC 445.993)

NAC 445B.896 Findings of commission.

1. At the conclusion of the hearing, the commission will take the case under submission and will notify the appellant by certified mail of its findings and recommendations in writing within 30 days after the date of the hearing.

2. Final recommendations will be in writing and will separately state findings of fact and conclusions of law. Findings of fact and recommendations will be based upon substantial evidence. Findings of fact will include a concise statement of the evidentiary facts supporting the findings.

[Environmental Comm'n, Practice Rule 10, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 15, 1-9-76]—(Substituted in revision for NAC 445.994)

NAC 445B.897 Transcripts. Transcripts will be furnished to any party upon payment of the fees prescribed by the commission.

[Environmental Comm'n, Practice Rule 12, eff. 1-7-73; A and renumbered as Rule 11, 4-3-74; renumbered as Rule 16, 1-9-76]—(Substituted in revision for NAC 445.995)

NAC 445B.899 Petitions for reconsideration or rehearing.

1. A petition for reconsideration must specifically:

(a) Identify each portion of the challenged decision which the petitioner deems to be unlawful, unreasonable, or based on erroneous conclusions of law or mistaken facts; and

(b) Cite those portions of the record, the law or the rules of the commission which support the allegations in the petition. The petition may not contain additional evidentiary matter or require the submission or taking of evidence.

2. A petition for rehearing must:

(a) Allege that a decision is in error because of an incomplete or inaccurate record;

(b) Specifically set forth the nature and purpose of any additional evidence to be introduced; and

(c) Show that such evidence is not merely cumulative and could not have been introduced at the hearing.

3. A petition for reconsideration or rehearing of a decision must be served upon all parties of record within 15 days after the effective date of the decision.

4. An answer to a petition for reconsideration or rehearing may be filed with the commission by any party of record in the proceeding within 5 days after the filing of the petition. The answer must be confined to the issues contained in the petition and served upon all parties of record. Proof of service must be attached to the answer.

5. The commission will grant or deny a petition for reconsideration or rehearing within 10 days after the date of the filing of the petition. The denial of a petition may be on the record without a separate decision.

6. Unless otherwise ordered by the commission, the filing of a petition for reconsideration or rehearing or the granting of such a petition does not excuse compliance with, or suspend the effectiveness of, the challenged decision.

7. If the commission grants a petition for reconsideration, it will re-examine the record and decision with regard to the issues on which reconsideration was granted and issue a modified final decision or affirm its original decision within 20 days after the petition is granted.

8. If the commission grants a petition for rehearing, it will, within 20 days thereafter, conduct a hearing to allow the parties to present additional evidence and will issue a modified final decision or affirm its original decision.

9. A modified final decision of the commission issued upon reconsideration or rehearing will incorporate those portions of the original decision which are not changed by the modified final decision.

10. A modified final decision of the commission or the affirmation of an original decision of the commission is a final decision for the purposes of judicial review.

(Added to NAC by Environmental Comm'n, eff. 11-9-95)